

1 changes to make to this document?

2 A. I have no substantive changes other than
3 the apology that I forgot page numbering down the
4 side, line numbering.

5 Q. Other than that dismal failure, are
6 there any additions or redactions that you need to
7 make?

8 A. No.

9 Q. If I were to ask you these questions
10 today, would your answers be the same as they were on
11 February 28, 2000, when you submitted the document?

12 A. Yes.

13 Q. And they would, of course, all be true
14 and correct?

15 A. Yes.

16 MR. HARVEY: With that I would move that
17 Staff Exhibit Number 4.0, the Verified Statement of
18 Julie M. VanderLaan, be made a part of the record in
19 this proceeding and entered into evidence; and I
20 would tender the witness for cross.

21 MS. HIGHTMAN: I object; there is no line
22 numbering, but I will waive that objection.

1 EXAMINER SHOWTIS: Staff Exhibit 4.0 lacking
2 line numbers is admitted.

3 (Whereupon Staff Exhibit 4.0
4 was admitted into evidence.)

5 EXAMINER SHOWTIS: You may cross.

6 CROSS EXAMINATION

7 BY MS. HIGHTMAN:

8 Q. Finally.

9 A. Good evening, I think we can say.

10 Q. At page 5 of your testimony you quote
11 the FCC's First Report and Order infamous Paragraph
12 1090?

13 A. Yes.

14 Q. And then note in your testimony, I
15 believe, that the FCC has established a two-part
16 test. Is that a correct paraphrase of your testimony
17 for the functionality -- I'm sorry, to determine
18 whether the tandem rate is applicable?

19 A. Yes, that's fair for determination of
20 the tandem rate in Paragraph 1090, yes.

21 Q. And isn't it correct that the FCC
22 codified its position regarding the tandem rate at 47

1 CFR 51.711?

2 A. Yes.

3 Q. And you would agree, wouldn't you, that
4 the regulation adopted by the FCC includes only a
5 geographic test?

6 A. I don't necessarily agree with that. I
7 believe that that is the rule, but I believe when you
8 look at a rule, you look at how that rule was
9 determined and I think it's very important to go back
10 to Paragraph 1090 where it discusses another test
11 which I call a functionality test.

12 Q. And the discussion of what you call the
13 functionality test occurs prior to the last sentence
14 of Paragraph 1090, isn't that right?

15 A. That's correct.

16 Q. And it's the last sentence itself that
17 was codified as Rule 51.711, is that correct?

18 A. That's correct.

19 Q. You would agree with me, wouldn't you,
20 that the rate center information provided by Focal
21 adequately shows geographic traffic dispersion for
22 purposes of establishing entitlement to the tandem

1 rate under the FCC's geographic test?

2 A. That is what I state in my testimony,
3 yes.

4 Q. Now, I want to turn to the functionality
5 test briefly and ask you that -- first of all, you
6 would agree, wouldn't you that a Nortel DMS-500
7 switch performs the same functions as a Class IV or
8 Class V switch?

9 A. Yes, I would agree.

10 Q. Now, at the time you prepared your
11 testimony you were not able to state whether Focal
12 meets the tandem functionality test, isn't that
13 right?

14 A. That's correct.

15 Q. Since that time you have reviewed some
16 additional information, have you not?

17 A. Yes.

18 Q. And have you reached a decision as to
19 whether you believe Focal meets a tandem
20 functionality test?

21 A. Yes, I have reached a decision and I
22 believe that it does meet the functionality test.

1 Q. And can you describe the information
2 that you relied upon in reaching that position? Was
3 it the verified statements?

4 A. Sure. I relied on Mr. Barnicle's
5 supplemental verified statement along with certain
6 sections of Mr. Starkey's verified statement, and I
7 was here for most of Mr. Barnicle's and Mr. Starkey's
8 cross examination.

9 MS. HIGHTMAN: I have no further questions
10 for now.

11 EXAMINER WOODS: Ms. Wittebort.

12 MS. WITTEBORT: Thank you.

13 CROSS EXAMINATION

14 BY MS. WITTEBORT:

15 Q. Ms. VanderLaan, in your testimony I
16 think you just stated you address the issue of
17 whether Focal's switch serves a geographic area
18 comparable to that served by the incumbent LEC's
19 tandem switch, correct?

20 A. Correct.

21 Q. And on page 7 of your testimony, your
22 verified statement, you discuss this Commission's

1 1996 order from the TCG arbitration?

2 A. Yes.

3 Q. Basically, I just want to ask you about
4 what your understanding is of what Ameritech Illinois
5 is advocating in this proceeding. You quote there on
6 page 7 language from TCG that Ameritech intended that
7 the FCC's rules required a CLEC provide service in
8 every end office of an incumbent LEC or be collocated
9 with every end office in order to receive the higher
10 tandem rate, is that correct?

11 A. That's what it states. I am not
12 comfortable in stating what Ameritech's specific
13 reasoning was behind it.

14 Q. I want to ask you, my next question is
15 probably almost the end of this line of questioning,
16 that is, you are not suggesting that that's the
17 position that Ameritech is taking in this, the Focal
18 arbitration, are you?

19 A. No, I don't believe that's right.

20 Q. And by referencing the Commission's
21 decision in this TCG arbitration, are you suggesting
22 that the Commission is bound by its decision in that

1 case to reach the same result here?

2 MS. HIGHTMAN: I object to the question as
3 seeking a legal conclusion as to whether the
4 Commission is bound by that decision in this case.

5 EXAMINER WOODS: I understand it's her
6 understanding; she is not an attorney. You may
7 answer.

8 THE WITNESS: A. Although I am not an
9 attorney, I see no reason why it should deviate.
10 That's my understanding of it. I agree with what it
11 has stated in the past and I see no reason to deviate
12 from what that decision stated.

13 MS. WITTEBORT:

14 Q. Would you agree that the Commission
15 should look very carefully at the facts in the case
16 when applying the comparability standard, the
17 geographic comparability standard?

18 A. Certainly.

19 Q. In preparing your testimony were you
20 generally familiar with Mr. Barnicle's verified
21 statement that he filed on behalf of Focal?

22 A. His initial verified statement?

1 Q. Yes.

2 A. Yes.

3 Q. And he presented evidence of geographic
4 areas in which Focal has customers and customer
5 circuits, is that correct?

6 A. That is correct.

7 Q. If you had wanted to chart the volume of
8 traffic -- or let me rephrase that. If the
9 Commission had wanted to chart the volume of traffic
10 terminated by Focal for calls originating from
11 Ameritech spread out over those geographic areas, you
12 wouldn't have been able to do it based on the
13 evidence Focal presented in this case, would you?

14 MS. HIGHTMAN: I object to the question.
15 She is asking this witness to characterize or specify
16 what was in some other witness' testimony that wasn't
17 a Staff witness. The testimony speaks for itself.
18 It is in the record, and I actually believe that
19 Ms. Wittebort asked Mr. Barnicle the same question.
20 So I think this is inappropriate and beyond the
21 scope.

22

1 MS. WITTEBORT:

2 Q. I will rephrase the question. In
3 forming your recommendation and opinion that Focal
4 has satisfied the geographic comparability test, did
5 you chart the volume of traffic terminated by Focal
6 for calls originating from Ameritech Illinois and
7 spread out over the geographic areas that Focal has
8 customers or customer circuits?

9 A. No, I did not. And as I stated in my
10 testimony, I do not believe the FCC's Order
11 contemplated any such test.

12 MS. WITTEBORT: I have no further questions.

13 EXAMINER WOODS: Do you have any redirect?

14 MR. HARVEY: None.

15 EXAMINER WOODS: You are done.

16 (Whereupon there was then had
17 an off-the-record discussion.)

18 EXAMINER WOODS: I think a briefing schedule
19 was previously established. I don't know if there is
20 any necessity of putting that into the record at this
21 time. The parties have also indicated that they are
22 continuing to work upon the language for the matrix.

1 They are directed to submit that to the Examiners and
2 to Staff immediately upon getting that done to aid in
3 preparation for the briefing.

4 Our intention is to maintain this docket
5 on a general continuance. In the event there is a
6 necessity for additional hearings, my experience in
7 previous arbitrations is that there is quite often
8 the need for additional hearings on short notice. So
9 at this time we will probably just be making this a
10 general continuance, but I don't anticipate having
11 another hearing. But in the event things come up
12 that require a hearing, it is much easier to notice
13 one up on short notice rather than go through the
14 process of reopening the record.

15 EXAMINER SHOWTIS: It's my understanding
16 that March 27 was the date for the brief, is that
17 correct?

18 MR. HARVEY: That's my recollection.

19 MS. WITTEBORT: That's my understanding.

20 EXAMINER SHOWTIS: I must reiterate that
21 that must be in hand to the Examiners on that date,
22 electronically to us that day, because we want to get

1 an e-mail copy that day.

2 EXAMINER WOODS: We can just continue this
3 generally.

4 (Whereupon the hearing in this
5 matter was continued
6 generally.)
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1 STATE OF ILLINOIS)
2) SS
3 COUNTY OF SANGAMON)
CASE NO.: 00-0027
4 TITLE: FOCAL COMMUNICATIONS CORPORATION OF ILLINOIS

5 CERTIFICATE OF REPORTER

6 We, Jami Tepker and Carla Boehl, do hereby
7 certify that we are court reporters contracted by
8 Sullivan Reporting Company of Chicago, Illinois; that
9 we reported in shorthand the evidence taken and
10 proceedings had on the hearing on the above-entitled
11 case on the 16th day of March, 2000; that the
12 foregoing pages are a true and correct transcript of
13 our shorthand notes so taken as aforesaid and contain
14 all of the proceedings directed by the Commission or
15 other persons authorized by it to conduct the said
16 hearing to be so stenographically reported.

17 Dated at Springfield, Illinois, on this 17th
18 day of March, A.D., 2000.

19 _____
20 *Carla Boehl*
21 _____

22 Certified Shorthand Reporter